January 29, 2004

Jennifer J. Johnson, Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551 (via e-mail to: regs.comments@federalreserve.gov)

Re: Docket No. R-1167, Regulation Z
Docket No. R-1168; Regulation B
Docket No. R-1169; Regulation E
Docket No. R-1170; Regulation M
Docket No. R-1171; Regulation DD

Dear Honorable Governors:

Jackson Federal Bank (the "Bank") is an OTS-chartered savings bank with $1.7 billion in assets. We operate primarily within southern California, where we have 15 retail offices and 3 lending offices
The Bank strongly opposes the proposed amendments to apply the formatting requirements now applicable to Regulation P (financial privacy) to other Federal Reserve regulations, namely, Regulations B, E, M, Z and DD on several grounds. In California, financial institutions' initial use of the Regulation P privacy disclosures (that use the same regulatory guidelines now to be expanded) drew vocal complaints from consumer groups, and was the genesis of the eventual enactment of a more restrictive California privacy law widely known as SB 1. Even the federal banking agencies have acknowledged that the Regulation P privacy disclosures need to be improved to ensure that they are more understandable and useful to consumers. Why, then, should banks adopt at this time a new standard for disclosures based on one that is broadly believed to be ineffective?

Need for changes is not supported. The existing "clear and conspicuous" standard applied in the referenced consumer regulations has been used in the marketplace in some fashion for decades. Beginning with the Truth in Lending Act in the 70's, this standard has been consistently adopted as new consumer protection regulations were promulgated over the years. This standard has guided the industry, is supported with interpretations and case law, and, as a result, has created a degree of consistency that can only promote consumer understanding.

When proposing to amend this long-standing standard in a manner that would result in significant costs to the industry, it is incumbent upon the Board to state the reasons for those changes. The Bank does not believe that the changes proposed would improve compliance. As discussed in greater detail below, the proposed changes would introduce both complexity and uncertainty, and thus significantly increase banks' compliance burden. The second justification—that the changes would aid consumer understanding of the disclosures—suggests underlying concerns about the existing disclosures, and that the proposed changes would eliminate or mitigate those concerns.

We respectfully note that the Board has failed to produce any substantial evidence that the existing disclosures are inadequate. And even if specific problems can be identified, the Board should consider adopting narrowly tailored changes that are more likely to address the Board's own stated goals without creating unnecessary costs and risks.

Proposals are costly and risky. The broad scope of the proposed changes cannot be overstated. The disclosures at issue are used in massive numbers of written consumer agreements, radio ads, television spots, on-line web pages, flyers, and mailed advertisements. Even disregarding for the moment the questionable merits of the proposed changes, the task of reviewing, reformatting, and rewriting the various documents affected is an enormous and costly undertaking.

We are also concerned that the widespread adoption of a subjective "reasonably understandable" standard could engender litigation. The challenge to prepare easily understandable language is already daunting given the extent and complexity of the regulations affected. Disclosures that are integrated with contracts would form a patchwork of highlighted information interspersed with contract terms, making it difficult for consumers to discern disclosures from contractual terms. Disclosures that attempt to use "everyday words" to convey technical terminology (such as an APR under Regulation Z) could invite plaintiffs' attorneys to challenge their "understandability" before a judge and jury. Because the issue of whether a particular disclosure meets the standard is a question of fact, banks would have difficulty defeating a claim on summary judgment, and thus be compelled to enter into settlements in order to avoid protracted litigation.

Finally, we believe the Board should not proceed with the proposal without first providing evidence of its necessity. . Should the Board nevertheless adopt some form of the proposal, we strongly recommend that model language be issued together with the new regulations, the use of which constitutes a safe harbor from liability and from regulatory violations. Any examples provided as guidance should clarify that they are suggestions only, and that the absence or variation of any guidance does not result in a violation.

We appreciate this opportunity to comment.

Sincerely,

Michelle De Lorier
Risk Manager
Jackson Federal Bank

cc: Office of Thrift Supervision
via email to: Regs.comments@OTS.treas.gov